

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILLARD WAYNE BAKER, JR.,

Plaintiff,

v.

LOZANO, et al.,

Defendants.

No. 1:24-cv-00716 KES GSA (PC)

ORDER GRANTING PLAINTIFF'S MOTION  
TO AMEND

(ECF No. 19)

ORDER DENYING PLAINTIFF'S MOTION  
FOR RECONSIDERATION

(ECF No. 22)

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this Court are Plaintiff's motion to file an amended complaint and a motion for reconsideration of recusal. ECF Nos. 19, 22 (respectively). For the reasons stated below, Plaintiff's motion to file an amended complaint will be granted, and his motion for reconsideration of recusal will be denied.

I. MOTION FOR LEAVE TO AMEND

In support of Plaintiff's motion to file an amended complaint, he states that he would like to amend pursuant to Federal Rule of Civil Procedure 15(d). ECF No. 19. He has filed a first amended complaint ("FAC") along with the motion. ECF No. 18.

1 Federal Rule of Civil Procedure 15(d) applies to the filing of supplemental pleadings, not  
2 to the filing of amended complaints. See generally Fed. R. Civ. P. 15(d). Therefore, Plaintiff's  
3 motion cannot be granted pursuant to that rule. However, given that Plaintiff's initial complaint  
4 has not been screened, and it appears that Plaintiff is raising claims in the FAC that stem from  
5 events stated in the original complaint (compare ECF No. 1, with ECF No. 18) (original  
6 complaint and FAC, respectively), the Court will grant Plaintiff's motion and give him leave to  
7 amend. See Fed. R. Civ. P. 15(a)(2) (permitting party to amend when court grants leave to do  
8 so). As a result, the Court will screen Plaintiff's FAC instead of his original complaint in due  
9 course.

## 10 II. MOTION FOR RECONSIDERATION OF RECUSAL

### 11 A. Relevant Facts

12 On December 23, 2024, a motion to recuse the Court filed by Plaintiff was docketed. ECF  
13 No. 20. The request was made due to the fact that the Court had recommended that the matter be  
14 dismissed because Plaintiff had failed to timely file a proper in forma pauperis application and  
15 six-month prison trust fund account statement despite having been ordered to do so. See ECF No.  
16 10 at 2-3 (order and findings and recommendations).

17 On July 31, 2025, the Court denied Plaintiff's motion for recusal on the grounds that it  
18 was frivolous and without merit. ECF No. 21 at 2-3. In Plaintiff's instant motion for  
19 reconsideration, he continues to argue why he did not timely file the proper forms related to his in  
20 forma pauperis application. ECF No. 22 at 1. He also states that he does not think that the Court  
21 has considered his past opposition to the Court's August 2024 findings and recommendations. Id.  
22 Plaintiff continues to provide reasons as to why he purportedly could not file the appropriate in  
23 forma pauperis documents in a timely manner. Id.

### 24 B. Applicable Law

25 Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration of a final  
26 judgment or any order where one of more of the following is shown: (1) mistake, inadvertence,  
27 surprise, or excusable neglect; (2) newly discovered evidence which, with reasonable diligence,  
28 could not have been discovered within twenty-eight days of entry of judgment; (3) fraud,

1 misrepresentation, or misconduct of an opposing party; (4) voiding of the judgment; (5)  
2 satisfaction of the judgment; and (6) any other reason justifying relief. Fed. R. Civ. P. 60(b). A  
3 motion for reconsideration on any of these grounds must be brought within a reasonable time, and  
4 no later than one year, of the entry of the judgment or the order being challenged. Id. “Motions  
5 for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are  
6 addressed to the sound discretion of the district court...” Allmerica Financial Life Insurance and  
7 Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir. 1997).

8 C. Discussion

9 Irrespective of the reasons why Plaintiff was unable to timely file his in forma pauperis  
10 documents, the fact remains that they were not timely filed, which is why the order  
11 recommending dismissal issued. That fact is clearly supported by the record, and it is undisputed  
12 by Plaintiff. See generally ECF No. 22 (Plaintiff’s motion for reconsideration). Furthermore,  
13 Plaintiff was warned that his failure to timely comply and submit the required financial  
14 documents could result in a recommendation that his case be dismissed. See ECF No. 6 at 1;  
15 ECF No. 7 at 3. It was only after the Court issued the order that recommended the matter be  
16 dismissed for failure to file the correct indigence paperwork (see ECF No. 10) (findings and  
17 recommendations order) that Plaintiff finally filed a proper in forma pauperis application and the  
18 requisite six-month trust fund account statement (see ECF Nos. 11, 13) (in forma pauperis  
19 application; trust account statement, respectively). As a result, the Court’s issuance of the  
20 findings and recommendations order was reasonable and warranted.

21 In sum, Plaintiff’s motion for reconsideration of the Court’s order denying his request for  
22 recusal fails to show that any of the reasons listed in Rule 60(b) that would warrant a grant of the  
23 instant motion for reconsideration – e.g., mistake, newly discovered evidence, fraud, et cetera –  
24 exist. For this reason, Plaintiff’s motion for reconsideration will be denied.

25 As for Plaintiff’s general complaint related to the time it has taken to move his case  
26 forward, Plaintiff is informed that the Eastern District of California has one of the most heavily  
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28

1 weighted caseloads in the country,<sup>1</sup> and that he can be assured that his complaint will be  
2 screened in due course.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion to amend the complaint (ECF No. 19) is GRANTED, and

5 2. Plaintiff's motion for reconsideration of judge recusal (ECF No. 22) is DENIED. See  
6 Fed. R. Civ. P. 60(b).

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9 IT IS SO ORDERED.

10 Dated: September 3, 2025

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> See Office of the Clerk, United States District Court, Eastern District of California, 2024  
26 Annual Report, "Weighted Filings," p. 35 (2024) ("[O]ur weighted caseload far exceeds the  
27 national average . . . ranking us fourth in the nation and first in the Ninth Circuit."). This problem  
28 is compounded by a shortage of jurists to review its pending matters. See generally id. (stating  
2024 Biennial Judgeship Survey recommended request for four additional permanent judgeships  
for Eastern District of California)